

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 21, 2004

Division: Growth Management

Bulk Item: No X

Department: Planning & Env. Resources

AGENDA ITEM WORDING: A public hearing to adopt an ordinance designating Conservation & Natural Areas (CNA) map boundaries and adopting an Interim Moratorium Ordinance deferring ROGO and NROGO allocations in areas of hammock and pinelands within the CNA until amendments to the 2010 Comprehensive Plan and Land Development Regulation implementing the Work Program mandated by Rule 28-20, F.A.C. are complete and adopted or twelve months, whichever comes first.

ITEM BACKGROUND: The Board of County Commissioners at a regular meeting on January 21, 2004 directed Growth Management Staff to prepare an ordinance deferring ROGO & NROGO allocation awards in areas containing tropical hardwood hammock or pinelands of two acres or greater within Conservation and Natural Areas (CNA), while staff prepares amendments to the 2010 Plan and the Land Development Regulations to further protect the ecosystem. Staff was also directed to review and propose changes to the CNA maps where appropriate.

The Planning Commission adopted a resolution recommending the ordinance to the BOCC on March 24, 2004.

PREVIOUS RELEVANT BOCC ACTION: The Board adopted Goal 105, "Smart Growth" in 2002. Resolution 346-2003 designating the boundaries of the CNA as an acquisition area was adopted in Aug. of 2003. Resolution 39-2004 approved the cooperative agreement with the State and directed staff to prepare the attached ordinance.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

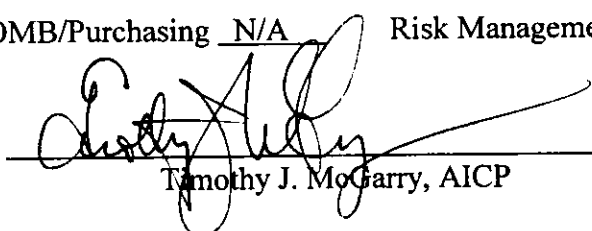
TOTAL COST: N/A **BUDGETED:** Yes No X

COST TO COUNTY: N/A

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing N/A Risk Management N/A

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # 04

**AMENDMENT TO THE MONROE
COUNTY LAND DEVELOPMENT
REGULATIONS**

Board of County Commissioners
Meeting ~ Key West
April 21, 2004

PROPOSED AMENDMENT TO MONROE COUNTY LAND DEVELOPMENT REGULATIONS

AN ORDINANCE AMENDING SEC. 9.5-122.3; SEC.9.5-124.8; SEC. 9.5-266 OF THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS IN ORDER TO GRANT AUTHORITY TO GROWTH MANAGEMENT DIRECTOR AND THE COUNTY ATTORNEY TO APPROVE RESTRICTIVE COVENANTS AND WARRANTY DEEDS UNDER ROGO/NROGO AND AFFORDABLE HOUSING AND PROHIBIT THE AWARD OF POINTS FOR AGGREGATION IN SPECIFIC AREAS; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; AND DIRECTING THE PLANNING DIRECTOR TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE.

Land Development Regulations Text Amendment

Staff	Approval	March 5, 2004	Staff Report
DRC	Approval	March 5, 2004	Resolution #D04-04
PC	Approval	March 24, 2004	Resolution #P04-04

Board of County
Commissioners

Draft Ordinance

for the first of
two hearings

ORDINANCE NO. _____

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS DESIGNATING THE BOUNDARIES OF CONSERVATION AND NATURAL AREAS; ADOPTING AN INTERIM MORATORIUM DEFERRING ROGO AND NROGO ALLOCATIONS IN AREAS OF TWO ACRES OR GREATER CONTAINING TROPICAL HARDWOOD HAMMOCK OR PINELANDS WITHIN ANY CONSERVATION AND NATURAL AREA UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS IMPLEMENTING THE WORK PROGRAM MANDATED BY RULE 28-20.100, F.A.C. ARE DRAFTED AND ADOPTED BY THE COUNTY COMMISSION OR TWELVE MONTHS, WHICHEVER FIRST OCCURS.

WHEREAS, the Florida Administrative Commission in 1996 enacted Rule 28-20.100, which created the "Work Program" in the 2010 Comprehensive Plan and mandated, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and,

WHEREAS, the "Work Program", section C., mandates that in Year 6 (July 13, 2002 through July 12, 2003) the County implement the Carrying Capacity Study by the adoption of all necessary plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the County's natural environment; and,

WHEREAS, the "Work Program", section F. mandates that the County initiate and complete a collaborative process for the adoption of Land Development Regulations (LDR) and Comprehensive Plan amendments to strengthen the protection of terrestrial habitat; and,

WHEREAS, although some portions of the Florida Keys Carrying Capacity Study (FKCCS), completed in September 2002, were found during peer review to be deficient in certain respects, the FKCCS terrestrial module is supported by reliable data and otherwise qualifies as a useful planning tool in comprehensive planning to strengthen the protection of terrestrial habitat ; and

WHEREAS, the FKCCS sets out guidelines that, *inter alia*, would direct future development away from "native habitat," and into "areas ripe for redevelopment or already disturbed"; and,

WHEREAS, Goal 105, "Smart Growth," was adopted by the Board of County Commissioners in 2001 to implement the mandate of Rule 28-20.100, F.A.C.; and,

WHEREAS, Objective 105.2 of the 2010 Comprehensive Plan, pursuant to the Rule 28-20.100, F.A.C. mandate, directs the County to map and designate land within the Florida Keys

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into three categories - Natural Area, Transition and Sprawl Reduction area, and Infill Area, based on the Smart Growth principles set forth therein; and,

WHEREAS, the Board of County Commissioners adopted Resolution 346-2003 designating the boundaries of "Conservation and Natural Areas", which represent the first land classification category, "Natural Area", under Objective 105.2; and,

WHEREAS, these Conservation and Natural Areas designated by the Board include privately-owned vacant lands targeted for acquisition from willing sellers for conservation and resource protection purposes; and,

WHEREAS, boundaries of the Conservation and Natural Areas were delineated in a manner that was intended to contain all significant upland habitat comprising patches of four acres or more as identified in the habitat data utilized in the FKCCS, including all upland tropical hardwood hammock and pinelands, lands needed to connect isolated patches of existing upland habitat and to provide buffers between habitat areas and development, all CARL lands, publicly-owned conservation lands, and most lands zoned Conservation, Sparsely Settled, and Native Area; and,

WHEREAS, the findings of the terrestrial module of the FKCCS fully supports, and the FKCCS Implementation – Rule 28.20 Work Group recommends, prevention of further fragmentation and degradation of tropical hardwood hammocks, pinelands, and transitional wetlands above the Mean High Water (MHW) line, through the preservation and public acquisition of all private, vacant lands that make up patches of tropical hardwood hammock and pinelands of four acres or more in size and transitional wetlands above the MHW line, along with buffer areas where appropriate.; and,

WHEREAS, existing County environmental regulations and acquisition programs adequately protect transitional wetlands above the MHW line; and,

WHEREAS, on December 16, 2003, the Governor and Cabinet, sitting as the Florida Administration Commission, upon the preliminary recommendation of the DCA, determined that Monroe County has not made substantial progress toward meeting the objectives of Year 7 of the Work Program, as the County's existing habitat protection regulations is inadequate to protect significant upland habitat until amendments are made to the 2010 Comprehensive Plan and Land Development Regulations; and,

WHEREAS, in response to DCA's preliminary recommendation and the Florida Administration Commission's determination of no substantial progress, and with the objective of meeting joint obligations under Chapter 380, *Florida Statutes*, Rule 28-20.100, *F.A.C.*, and the Monroe County Year 2010 Comprehensive Plan, the Board adopted Resolution 39-2004 on January 21, 2004, including a "Cooperative Agreement between the DCA and Monroe County to Address Significant Work Program Issues" (the "Cooperative Agreement"); and,

WHEREAS, as part of "Cooperative Agreement", the Board agreed to draft, and to hold public hearings to adopt, an interim moratorium on ROGO/NROGO allocation awards in areas

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containing tropical hardwood hammock or pinelands two acres or greater in size within Conservation and Natural Areas; and,

WHEREAS, the upland tropical hardwood hammock and pinelands contained within the Conservation and Natural Areas are precisely those significant upland habitats that are important to the sustainability of protected species and to maintenance of ecosystem integrity as called for by the terrestrial module of the FKCCS and Goal 105 of the 2010 Comprehensive Plan; and,

WHEREAS, the bio-diversity and ecological functions of upland habitat can be adversely affected by decreasing patch size, characterized by a reduction in number of species, an increase in the relative intensity of edge effects, and an increase in the patch's vulnerability to secondary human effects; and,

WHEREAS, except for three patches totaling 15.5 acres, which the Board has committed to prioritize for purchase from voluntary sellers, upland tropical hardwood hammock and pinelands habitat located outside of the Conservation and Natural Areas are contained in isolated patches of less than two acres in size; and,

WHEREAS, these small patches less than two acres in size generally lack long-term viability as habitat of any regional, state, or national importance and are isolated, impacted by development, and/or can be connected with other habitat areas, which characteristics do not warrant interim special protection beyond that afforded under existing regulations; and,

WHEREAS, continued issuance of residential (ROGO) and non-residential (NROGO) allocations in tropical hardwood hammock and pineland habitat patches of two acres or more within the Conservation and Natural Areas prior to the completion of comprehensive planning to strengthen the protection of terrestrial habitat would result in further loss of valuable native habitat and may have an irreversible detrimental impact on the County's ability to implement the Smart Growth policies set forth in Goal 105 of the 2010 Comprehensive Plan and, Rule 28-20.100, F.A.C.; and,

WHEREAS, ROGO and NROGO allocations on Big Pine Key and No Name Key are already subject to an interim moratorium until a Habitat Conservation Program is approved by the U.S. Fish and Wildlife Service and amendments to the County's 2010 Comprehensive Plan and Land Development Regulations, implementing the Community Master Development Plan for these two islands, are found in compliance by the DCA; and,

WHEREAS, an estimated 916 acres of undeveloped, privately-owned upland tropical hardwood hammock and pinelands habitat threatened by development are subject to these Interim Development Regulations; and,

WHEREAS, in order to make effective Goal 105 of the 2010 Comprehensive Plan and Rule 28-20.100, F.A.C., it is necessary to halt temporarily works of development as provided herein which might otherwise absorb the entire capacity of the County for further development or direct it out of harmony with the Comprehensive Plan; and,

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WHEREAS, the County has committed necessary staff and resources to the development of permanent policies and regulations to implement Goal 105 of the 2010 Comprehensive Plan and Rule 28-20.100, F.A.C., in order to facilitate diligent and good faith efforts to establish permanent policies and regulations within a reasonable period of time; and,

WHEREAS, implementation of Goal 105 of the Comprehensive Plan and Rule 28-20.100, F.A.C. involves complex environmental, social, and economic issues, a broad geographic scope, numerous governmental agencies, and a diversity of stakeholder interests; and,

WHEREAS, this Interim Moratorium Ordinance serves compelling state and regional governmental interests and is the minimum action necessary to protect the health, safety, and general welfare of the citizens of Monroe County and to effectuate Goal 105 of the Comprehensive Plan and Rule 28-20.100, F.A.C.; and,

WHEREAS, this Interim Moratorium Ordinance provides mechanisms to assure democratic discussion and participation by citizens, developers, and property owners who may be affected by eventual amendments to the Land Development Regulations and Year 2010 Comprehensive Plan; and,

WHEREAS, given the scope of the issues and areas to be addressed by Goal 105 of the 2010 Comprehensive Plan, the twelve month timeframe is necessary and reasonable in order to complete a fair and comprehensive planning and public participation process that results in legally- and scientifically-sound policies and regulations; and,

WHEREAS, Chapter 125, F.S., authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting the health, safety, and welfare of the citizens of Monroe County; and,

WHEREAS, this Interim Moratorium Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Section 163.3161, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land development regulations including provisions like moratoria to implement the adopted comprehensive plan; and,

WHEREAS, the purpose and intent of this Interim Moratorium Ordinance is necessary to provide the County the opportunity to create a system of development rights and land uses that will implement Rule 28-20.100, F.A.C. and Goal 105 of the 2010 Comprehensive Plan and that will ameliorate potentially adverse economic impacts on private property owners; and,

WHEREAS, the Board of County Commissioners at a regular meeting on January 21, 2004, directed staff to prepare an ordinance deferring ROGO and NROGO allocations, while the staff prepares amendments to the 2010 Comprehensive Plan and the Land Development Regulations to further protect the ecosystem; and,

WHEREAS, the Board at that same regular meeting directed the staff to further review and propose appropriate revisions to the Conservation and Natural Area maps and that such

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process shall include input from the DCA and the public and the maps shall be included in the public hearings on the Interim Moratorium Ordinance; and,

WHEREAS, following the direction of the Board of County Commissioners, the Growth Management Division staff immediately undertook the development of this Interim Moratorium Ordinance and a review of the Conservation and Natural Areas maps, drafts of which were presented to and discussed by the Planning Commission at public hearings on March 10 and March 24, 2004; and,

WHEREAS, the Planning Commission has reviewed the draft Interim Moratorium Ordinance and Conservation and Natural Area maps and recommended approval to the Board of County Commissioners on March 24, 2004; and,

WHEREAS, the Board of County Commissioners has reviewed and considered the draft Interim Moratorium Ordinance and Conservation and Natural Area maps recommended by the Planning Commission and Growth Management Division staff;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1: Pursuant to Policy 105.2.1, Year 2010 Comprehensive Plan, Conservation and Natural Areas are hereby designated, the boundaries of which are described in the maps, attached hereto, and those maps are made part of this ordinance.

Section 2: During the period that this Interim Moratorium Ordinance is in effect, the boundaries of the Conservation and Natural Areas may be amended by ordinance of the Board of County Commissioners upon recommendation of a Special Master duly appointed by Resolution of the Board of County Commissioners. Such amendments to the Conservation and Natural Areas boundaries shall conform with the above-recited considerations and criteria utilized in the initial determination of the boundaries of these Areas; however, this shall not be construed to foreclose appropriate changes or additions to the original criteria used to determine the Conservation and Natural Areas.

Section 3: Proposed amendments to Conservation and Natural Areas boundaries may be initiated by the Director of Planning and Environmental Resources or by written application submitted by an affected property owner to the Planning and Environmental Resources Department on a form approved by the Department. During the term of this Interim Moratorium Ordinance, applications for proposed amendments to the boundaries of the Conservation and Natural Areas shall follow a streamlined review process, *i.e.*, review by the Development Review Committee and Planning Commission will not be required, and the following procedure shall instead be utilized:

- (a) Application for a proposed amendment, together with an administrative fee of \$500, will be submitted to the Planning and Environmental Resources Department for consideration by the Special Master at a public hearing advertised at least fifteen days prior to the hearing. The Special Master shall receive written and/or oral

testimony of County staff and applicant, and shall provide reasonable opportunity for relevant and material public testimony. The Special Master shall promptly render a written opinion to the Board of County Commissioners, recommending approval (in whole or in part) or denial of the request for a boundary amendment.

- (b) The public hearing for the Board of County Commissioners' consideration of the Special Master's recommendations will be advertised at least 15 days prior to the public hearing, but no posting of the property will be required.

Section 4: Pursuant to its lawful authority and the pending-legislation doctrine set forth in *Smith vs. City of Clearwater*, 383 So. 2d 681 (FL. 2nd DCA, 1980), the Board of County Commissioners establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until either (a) the enactment of amendment to the Year 2010 Comprehensive Plan and Land Development Regulations adopted by the County Commissioners implementing Goal 105 of the 2010 Comprehensive Plan, or (b) twelve months from the date of the adoption of this Ordinance, whichever first occurs. The Board of County Commissioners, upon the recommendation of the Planning Commission, may amend this ordinance to extend its provisions for a period not exceeding an additional six months, if at any time prior to the twelve-month sunset date of this ordinance the Board determines that additional time will be required to adopt the contemplated Comprehensive Plan and LDR amendments.

Section 5: During the period (defined in Section 4, above) that this interim ordinance is in effect, no Rate of Growth Ordinance allocation award, whether residential (ROGO) or non residential (NROGO), shall be made for development that involves the clearing of any portion of an upland tropical hardwood hammock or pinelands habitat contained in a patch of two acres or more in size within a Conservation and Natural Area. Reference herein to a Conservation and Natural Area means all land located within the boundaries of the attached Conservation and Natural Areas maps (as the same may be amended pursuant to Section 3, above). Florida Marine Resources Institute ADID Maps, recent aerial photographs, site visits, and other reliable and generally-accepted scientific data may be utilized to determine whether a specific parcel meets the acreage and habitat-type criteria of the patches subject to the Interim Moratorium.

The Director of Planning and Environmental Resources shall have the authority to make the final decision concerning identification of the habitat patches subject to this Interim Moratorium. Decisions of the Director identifying patches subject to this interim moratorium may be appealed as provided under Section 9.5-521, Monroe County Code.

Section 6: Until expiration of the interim moratorium created by Sections 4 and 5 hereof, no Rate of Growth Ordinance allocation award, whether residential (ROGO) or non-residential (NROGO), shall be made pursuant to an application with an entry date of January 14, 2004, or later, involving the clearing of any portion of an upland tropical hardwood hammock or pinelands habitat contained in a patch of two acres or more in size within a Conservation and Natural Area.

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allocation and other land development regulations are legally defensible and fiscally sound; 3) identification of plan and regulatory amendments and strategies to ensure that the goals and objectives of the FKCCS and the 2010 Comprehensive Plan are properly implemented; 4) creation of permanent regulations that adequately protect and balance other important objectives of the 2010 Comprehensive Plan, including, for example, affordable housing needs; and, 5) identification and securing of dedicated short- and long-term dedicated funding sources for land acquisition and affordable housing.

Section 15: If any section, subsection, sentence, clause, item, change or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 16: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 17: The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapters 163 and 380, Florida Statutes.

Section 18: This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission finding the amendment in compliance with Chapter 163 and 380, Florida Statutes.

Section 19: This Ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the adoption of this Ordinance, unless repealed sooner or extended pursuant to the terms set forth herein.

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Section 7: Any residential (ROGO) or non-residential (NROGO) building permit application with a ROGO/NROGO entry date of January 13, 2004, or earlier shall be exempt from this Interim Moratorium.

Section 8: Any residential (ROGO) or non-residential (NROGO) building permit application for development on Big Pine Key or No Name Key shall be exempt from this Interim Moratorium.

Section 9: As of the effective date of this Ordinance, no ROGO or NROGO allocation application that involves the clearing of any portion of an upland tropical hardwood hammock or pinelands habitat contained in a patch of two or more acres in size located within a Conservation and Natural Area shall be accepted or processed by the Growth Management Division, except applications exempt hereunder and development awarded a vested rights determination pursuant to Section 12 hereof.

Section 11: This Ordinance shall not be construed to prohibit the continuation or establishment of any use that does not require either a ROGO or NROGO allocation award, and that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

Section 12: Any property owner adversely affected by the provisions of this Interim Moratorium Ordinance may seek a determination that the owner's proposed development is vested against the provisions of this Interim Moratorium, by filing with the Director of Growth Management, together with an administrative fee in the amount of \$400, a vested rights application setting forth facts establishing that the applicant met, prior to the date that this Ordinance is adopted by the Board of Monroe County Commissioners, the vested rights standards set forth in Section 9.5-181 through Section 9.5-184, Monroe County Code. Such application must be filed no later than sixty (60) days after the effective date of this Ordinance.

Section 13: The County Administrator is directed to have the Growth Management Division begin immediately preparing the draft text and map amendments and other supporting studies in cooperation with the Planning Commission in order to effectuate the provisions of Goal 105 of the 2010 Comprehensive Plan and Rule 28-20.100, F.A.C., within the timeframes set forth herein. As called for in Exhibit One ("Cooperative Agreement between the DCA and Monroe County to Address Significant Work Program Issues") of Resolution 39-2004, the staff is directed to prepare the following map and text amendments for adoption by the Board of County Commissioners: 1) Tier Overlay Map Designations in accordance with Goal 105; 2) revisions to ROGO/NROGO based on Tier System utilizing a positive approach that predominately relies on land dedication and aggregation; and 3) revisions to environmental regulations based on the Tier system rather than the existing Habitat Evaluation Index.

Section 14: In preparing these amendments, the County Administrator is directed to focus the Growth Management Division's efforts in the following important areas: 1) preparation of substantive revisions to simplify and streamline the County's permit allocation system, and of other environmental regulations designed to insure continuing upland habitat protection, in form that will make them more transparent and understandable to the public; 2) consultation with appropriate legal and financial experts to ensure to the maximum extent possible that the permit

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PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, 2004.

Mayor Murray Nelson	_____
Mayor Pro Tem David Rice	_____
Commissioner Charles "Sonny" McCoy	_____
Commissioner George Neugent	_____
Commissioner Dixie Spehar	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____
Mayor Murray Nelson

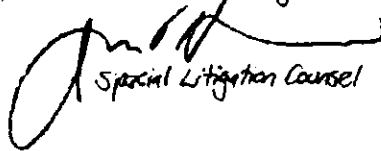
(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

ATTACHED - CONSERVATION AND NATURAL AREAS MAPS

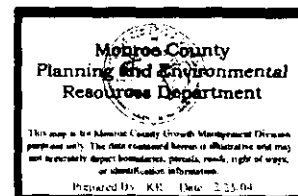
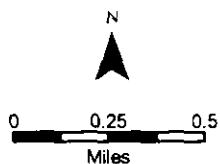
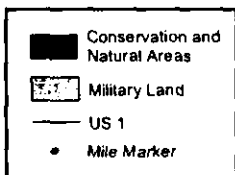
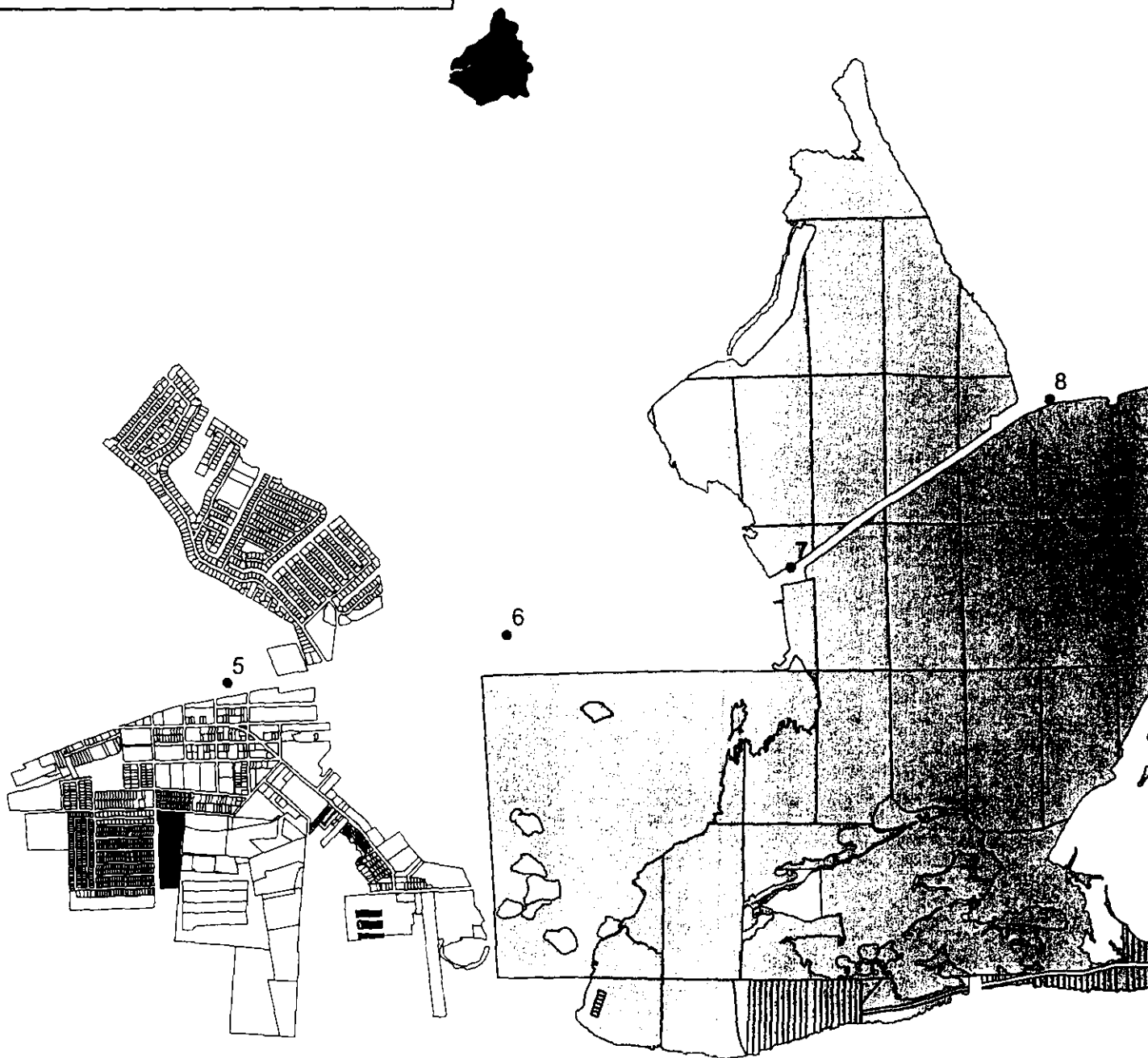
Approved for form and legal sufficiency.


Special Litigation Counsel

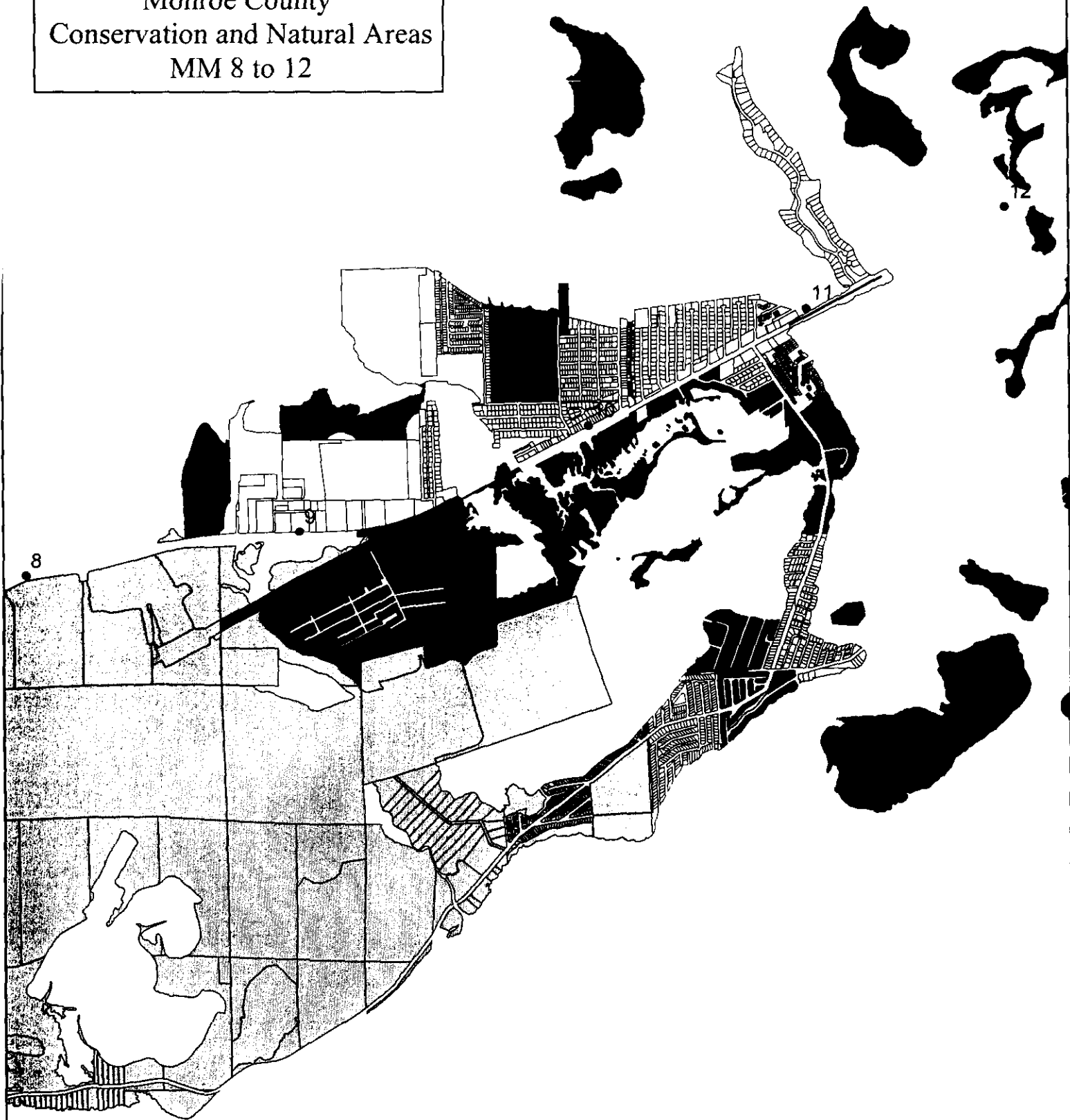
**Conservation and Natural Area
Maps**

**With Amendments Recommended
By the Staff and the Planning Commission**

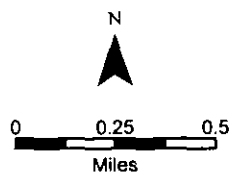
Monroe County Conservation and Natural Areas MM 4 to 8



Monroe County
Conservation and Natural Areas
MM 8 to 12



- Conservation and Natural Areas
- Military Land
- US 1
- Mile Marker

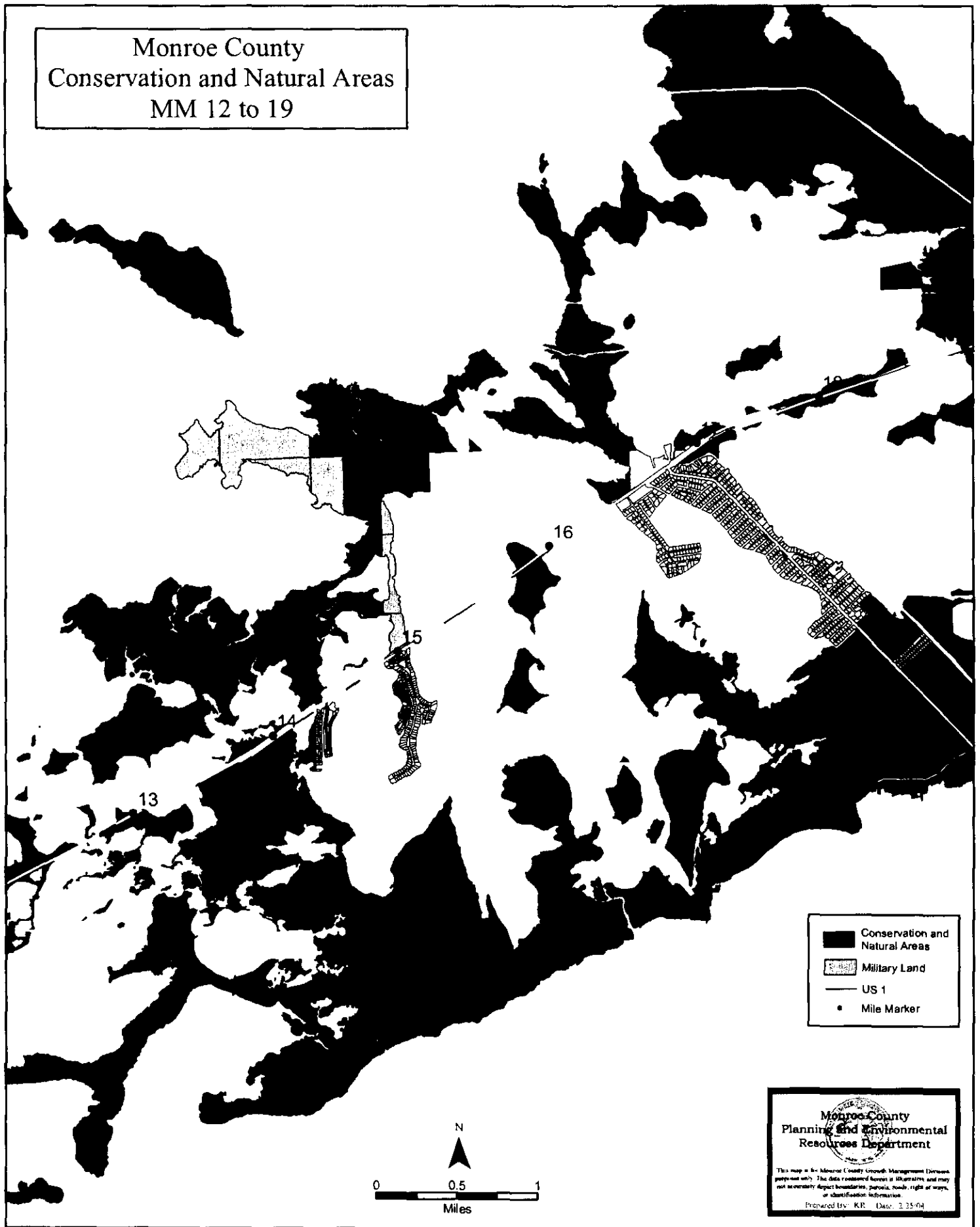


Monroe County
Planning and Environmental
Resources Department

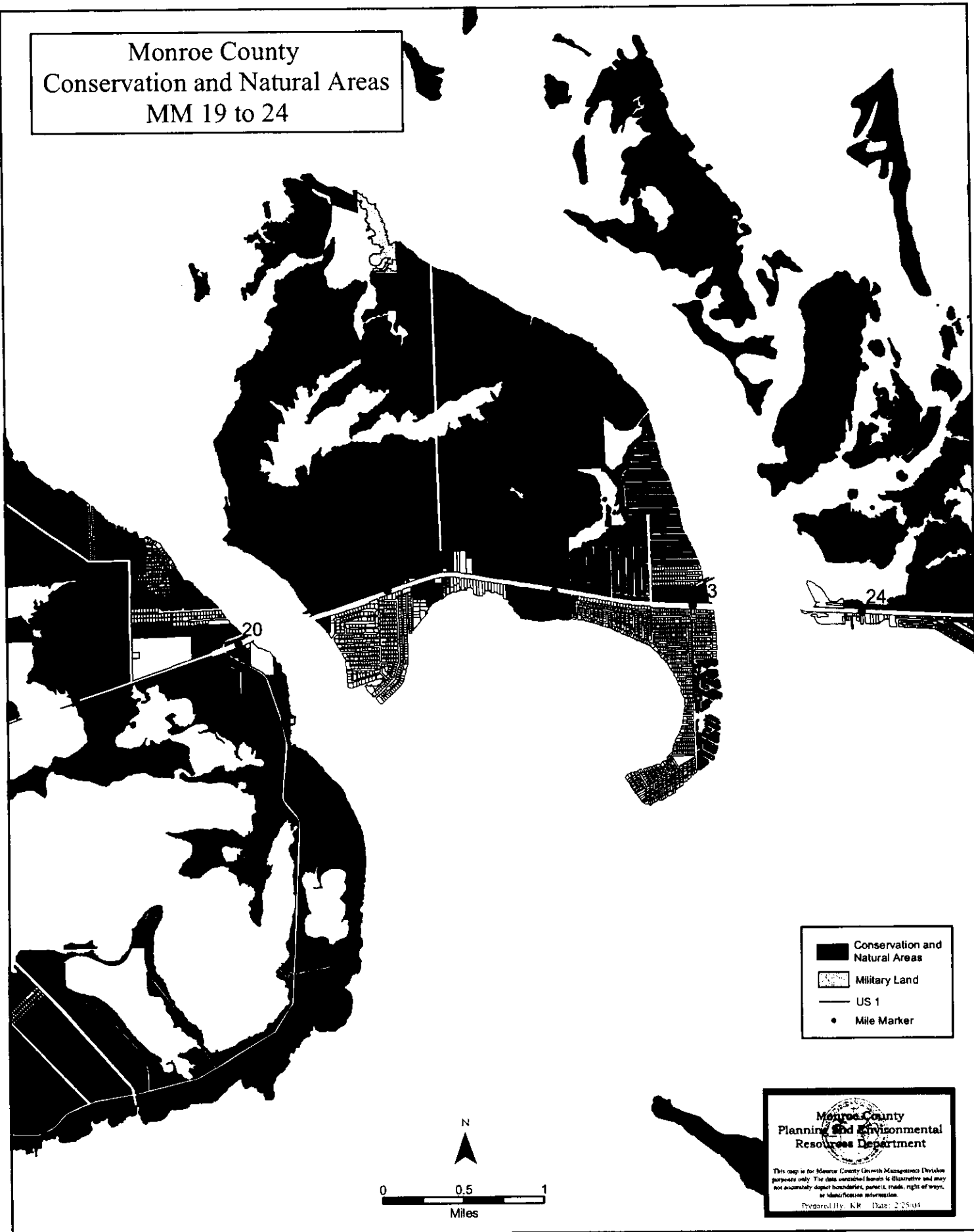
This map is for Monroe County Council Management Division purposes only. The data contained herein is illustrative and may not accurately depict boundaries, parcels, roads, rights of ways, or identification information.





Prepared By: KR Date: 2/25/04

Monroe County
Conservation and Natural Areas
MM 12 to 19



Monroe County Conservation and Natural Areas MM 19 to 24



	Conservation and Natural Areas
	Military Land
	US 1
	Mile Marker



Monroe County
Planning and Environmental
Resources Department

This map is for Monroe County Growth Management Division purposes only. The data presented herein is illustrative and may not accurately depict boundaries, parcels, roads, right of ways, or identification information.

Prepared By: K.R. Date: 2/25/04

Monroe County
Conservation and Natural Areas
MM 24 to 30



Monroe County
Planning and Environmental
Resources Department

This map is for Monroe County General Management Division purposes only. The data contained herein is illustrative and may not accurately depict boundaries, parcels, roads, right of ways, or land use information.

Prepared By: K.R. Date: 2/25/04

Monroe County
Conservation and Natural Areas
MM 29 to 35

